

Area of Law	Criminalization of Domestic Minor Sex Trafficking
The Policy Point	Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.
The Legislative Solution	Prostitution laws that refer to the state sex trafficking law enable identification of CSEC victims as trafficking victims and promote exploited minors' access to protections and benefits available under federal and state statutes for trafficking victims. Whether through a direct requirement that law enforcement report prostituted minors as an incident of sex trafficking, or through an affirmative defense acknowledging that minors should not be held liable for conduct committed as a result of being a trafficking victim, referring to the trafficking statute is necessary to align the treatment of victims under prostitution and sex trafficking laws. Providing this clarity in the prostitution law furthers efforts to track the scope of child sex trafficking in the state and identify victim-centered ways in which to counter it. To accomplish these goals, prostitution laws must refer to the trafficking law when the person charged or victimized is a minor or a victim under the state human trafficking law, regardless of whether someone is charged or prosecuted for victimizing the minor. Ensuring the criminal code is designed to consistently identify minor victims of commercial sexual exploitation as victims of sex trafficking helps to accurately assess and respond to the specific needs of this victim population.

Select Statute Highlights

The following state prostitution laws refer to the state or federal human trafficking statute.

Arkansas

Ark. Code Ann. §§ 5-70-102(c) (Prostitution) and 5-70-103(c) (Sexual solicitation) state: "It is an affirmative defense to prosecution [under this section] that the person engaged in an act of [prostitution or sexual solicitation] as a result of being a victim of trafficking of persons."

Connecticut

Conn. Gen. Stat. § 53a-82 (Prostitution: Class A misdemeanor) states, "(a) A person sixteen years of age or older is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee, (b) In any prosecution for an offense under this section [Prostitution: Class A misdemeanor], it shall be an affirmative defense that the actor was a victim of conduct by another person that constitutes (1) a violation of section 53a-192a [Trafficking in persons], as amended by this act, or (2) a crim-

inal violation of 18 U.S.C. Chapter 77 [Peonage, slavery, and trafficking in persons], as amended from time to time. (c) In any prosecution of a person sixteen or seventeen years of age for an offense under this section, there shall be a presumption that the actor was a victim of conduct by another person that constitutes (1) a violation of section 53a-192a [Trafficking in persons], as amended by this act, or (2) a criminal violation of 18 U.S.C. Chapter 77 [Peonage, slavery, and trafficking in persons], as amended from time to time. . . ."

Georgia

Ga. Code Ann. § 16-3-6(a)(3) states, "[a] person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46." Ga. Code Ann. § 16-3-6(b). "Sexual crime" is defined as "prostitution, sodomy, solicitation of sodomy, or masturbation for hire as such offenses are proscribed in Chapter 6 of Title 16."

Illinois

Ill. Comp. Stat. Ann. § 720 ILCS 5/11-14(d) (Prostitution) refers to Ill. Comp. Stat. Ann. § 720 ILCS 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses) stating, “Notwithstanding the foregoing, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section [Prostitution] is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Sections 2-5 and 2-6 of the Juvenile Court Act of 1987. Pursuant to the provisions of Section 2-6 of the Juvenile Court Act of 1987, a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of Section 10-9 [Trafficking in persons, involuntary servitude, and related offenses] of this Code to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act.”

Louisiana

La. Rev. Stat. Ann. § 14:82(G) (Prostitution; definition; penalties; enhancement) provides an affirmative defense from prosecution for prostitution offenses if “during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes” as provided in La. Rev. Stat. Ann. § 14:46.3(A), (B) (Trafficking of children for sexual purposes). Additionally, La. Rev. Stat. Ann. § 14:46.3(E) (Trafficking of children for sexual purposes) states that “[n]o victim of trafficking as defined by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked.”

Nebraska

Neb. Rev. Stat. Ann. § 28-801(1) (Prostitution; penalty) states that “[e]xcept as provided in subsection (5) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318 [Terms, defined], with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.” Neb. Rev. Stat. Ann. § 28-801(3) goes on to provide that “[i]t is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined].”